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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Doc. No. 101108560-3462-02]

RIN 0648-BA43

Fisheries of the Exclusive Economic Zone Off Alaska; Revise Maximum Retainable Amounts of Groundfish Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to increase the maximum retainable amounts (MRAs) of groundfish using arrowtooth flounder (Atheresthes stomias) and Kamchatka flounder (Atheresthes evermanni) as basis species in the Bering Sea and Aleutian Islands management area (BSAI). This action allows the use of BSAI arrowtooth flounder and Kamchatka flounder as basis species for the retention of species closed to directed fishing and is necessary to improve retention of otherwise marketable groundfish in these BSAI fisheries. This action also includes four regulatory amendments related to harvest management of Kamchatka flounder.

Two amendments are necessary to account for Kamchatka flounder in the same manner as arrowtooth flounder in the BSAI and to aid in the recordkeeping, reporting, and catch accounting of flatfish in the BSAI.

The third amendment is necessary to provide NMFS the flexibility to allocate Kamchatka flounder (and other species in the future) to the Western Alaska Community Development Quota

(CDQ) Program in the annual harvest specifications. Through this action, NMFS intends to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The proposed rule to implement this action may also be accessed at <http://alaskafisheries.noaa.gov>

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907-586-7228 or Tom Pearson, 907-481-1780.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone in the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations at § 679.20(e) and (f), and Table 11 to 50 CFR part 679 establish MRA percentages for groundfish species and species groups. An MRA is the maximum round weight

of a species or species group closed to directed fishing that may be retained onboard a vessel. NMFS established MRAs to allow vessels engaged in fishing for species or species groups open to directed fishing (basis species) to retain a specified amount of species or species group closed to directed fishing. The percentage of a species or species group closed to directed fishing retained in relation to the basis species must not exceed the MRAs listed in Table 11 to 50 CFR part 679.

MRA percentages serve as a management tool to slow harvest rates and reduce the incentive for targeting species closed to directed fishing. MRAs allow for some retention of species closed to directed fishing instead of requiring that catch of all species closed to directed fishing be discarded. MRA percentages reflect a balance between the recognized need to slow harvest rates and minimize the potential for discards, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited retention.

The Department of Commerce, NOAA Office for Law Enforcement or the United States Coast Guard, District 17, Enforcement Branch may review production data to determine if vessels have complied with specified MRAs by comparing the estimated round weight of the retained species closed to directed fishing with the estimated round weight of all retained basis species. The amount of round weight equivalent (defined at § 679.2) of each retained species must not exceed the MRA, a specified percentage, of the round weight of a basis species. For example, when Pacific cod is open to directed fishing and arrowtooth flounder is closed to directed fishing, a vessel operator may retain a round weight equivalent amount of arrowtooth flounder of up to 35 percent of the round weight equivalent of Pacific cod that is retained onboard the vessel. In this example, all incidental catch of arrowtooth flounder in excess of the 35 percent MRA, from Table 11 to 50 CFR part 679, must be discarded.

MRAs for Groundfish in Arrowtooth Flounder Directed Fishery

The Council recognized that efforts by the non-pelagic trawl fleet to improve retention of groundfish species in the BSAI arrowtooth flounder fishery are constrained by the current zero MRAs for groundfish where arrowtooth flounder is a basis species. Arrowtooth flounder has become an important species for some non-pelagic trawl vessels to retain and process. Specifically, arrowtooth flounder is harvested and processed by non-pelagic trawl catcher/processor vessels operating in non-pollock fisheries in the BSAI, more commonly known as the Amendment 80 sector (72 FR 52668, September 14, 2007). While this species is occasionally caught incidentally by other gear and operation type, they are typically discarded and not retained or processed.

In October 2010, the Council recommended setting the MRAs for BSAI groundfish using arrowtooth flounder as the basis species at the same MRA percentages as those set for BSAI groundfish using Pacific cod as a basis species with two exceptions (Greenland turbot and the “other species” group). The EA/RIR prepared for this action demonstrates that the MRAs listed in Table 11 to 50 CFR part 679 for groundfish caught in the Pacific cod directed fishery represent a conservative guide for managing incidental catch in the arrowtooth flounder fishery. MRAs for groundfish species in the Pacific cod directed fishery are lower than the MRAs for a number of groundfish species that are commonly caught by the non-pelagic trawl fleet in other directed flatfish fisheries.

The Council recommended that the MRAs for Greenland turbot in the arrowtooth flounder directed fishery be based on the approximate average incidental catch of Greenland turbot in those fisheries between 2003 and 2009 because average gross earnings per pound of retained arrowtooth flounder increased during that time. The Council recommended that the

MRAs for the aggregated “other species” group (skates, sharks, sculpins, and octopus) caught in the arrowtooth flounder fishery also be based on the approximate average incidental catch observed between 2003 and 2009. The Council intends these MRA modifications to allow vessels fishing in the arrowtooth flounder and/or Kamchatka flounder fisheries some retention of incidentally-caught Greenland turbot and “other species” if Greenland turbot and “other species” are closed to directed fishing.

Prior Management Actions on Groundfish in Arrowtooth Flounder and Kamchatka Flounder Directed Fisheries

Prior to 2011, arrowtooth flounder and Kamchatka flounder were managed together with a single overfishing level (OFL), acceptable biological catch (ABC), and TAC in the BSAI. Arrowtooth flounder and Kamchatka flounder are caught at the same time in the non-pelagic trawl fishery, and are often difficult to distinguish from each other. Throughout most of the BSAI, however, Kamchatka flounder are less abundant than arrowtooth flounder. As the directed fishery for arrowtooth flounder and market prices for Kamchatka flounder have increased, Kamchatka flounder in the arrowtooth flounder fishery has been caught in disproportionately greater amounts relative to Kamchatka flounder biomass estimates. In 2010, the Council recommended that separate OFLs, ABCs, and TACs be established for arrowtooth flounder and Kamchatka flounder to protect the stock of Kamchatka flounder (76 FR 11139, March 1, 2011). The impacts of the harvest strategies and resulting TAC amounts were analyzed in the 2007 Alaska Groundfish Harvest Final Specifications Environmental Impact Statement available at <http://alaskafisheries.noaa.gov>. For purposes of MRA compliance, Kamchatka flounder was grouped with “other flatfish” (see footnote 2 to Table 11 to part 50 CFR 679), and arrowtooth flounder and Kamchatka flounder were assigned different MRAs.

Revisions to MRAs and Prohibited Species Catch

This rule revises Table 11 to 50 CFR part 679 to increase the MRAs for groundfish species and species groups closed to directed fishing using arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shorttraker rockfish and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; from zero percent to 7 percent for Greenland turbot; and from zero percent to 3 percent for the “other species” group.

This rule revises Table 11 to eliminate language that is no longer relevant because of revisions implemented through prior actions. NMFS moves Kamchatka flounder from “other flatfish” to the arrowtooth flounder category in Table 11 to 50 CFR part 679. NMFS revises footnote 4, which defines “other species,” to remove the sentence “Forage fish, as defined at Table 2c to this part are not included in the ‘other species’ category.” This revision eliminates an unnecessary clarification because capelin, eulachon, and smelt were removed from “other species” category and placed in a forage fish species category in 1998 (63 FR 13009, March 17, 1998). This revision eliminates a potential source of confusion for the entities subject to this rule who are required to use the revised Table 11 to comply with groundfish MRAs.

Management Measures

Three additional regulatory amendments provide for the identical MRA, PSC, and harvest management measures for arrowtooth flounder and Kamchatka flounder. These amendments are necessary to facilitate recordkeeping, reporting, and catch accounting of arrowtooth flounder and Kamchatka flounder and would ensure consistent timing of the harvest

of these two species. A fourth amendment is necessary to clarify how NMFS will determine whether to allocate a portion of a new TAC category to the Western Alaska Community Development Quota (CDQ) program.

The first amendment revises § 679.21(e)(3)(iv)(C) to include Kamchatka flounder in the same trawl fishery category for PSC management as arrowtooth flounder. This revision is necessary because arrowtooth flounder and Kamchatka flounder are harvested in a mixed groundfish fishery in which vessels typically encounter similar PSC species.

The second amendment establishes identical seasonal opening dates for arrowtooth flounder and Kamchatka flounder, and is necessary to manage the Kamchatka flounder fishery in the same time period as the arrowtooth flounder fishery. Arrowtooth and Kamchatka flounder have historically been managed together because they are mixed-stock species and are often targeted together. Initiating the fishing season for these two species on different dates would cause significant management difficulties and therefore NMFS establishes concurrent seasonal management. This rule revises the BSAI groundfish seasons at § 679.23(e)(1) to include Kamchatka flounder with arrowtooth flounder and Greenland turbot so that the season for all these species would open on May 1.

The third amendment revises Table 3 to 50 CFR part 679, which lists the product recovery rates (PRR) for groundfish species and conversion rates for Pacific halibut. These revisions consolidate the eight flatfish species (including Kamchatka flounder) in Table 3 to 50 CFR part 679 into a single row, and apply identical PRRs to these eight flatfish species. This consolidation of flatfish into one row would simplify Table 3 and is necessary to facilitate recordkeeping, reporting, and MRA determination. Currently, identical PRRs are listed in Table 3 to 50 CFR part 679 for these eight individual species of flatfish, with the exception of

yellowfin sole, which is also listed as having a PRR for surimi. This rule establishes one surimi PRR for all the species within the consolidated flatfish category because the similar morphology of the species within this category is likely to produce a similar proportion of utilized surimi product. This rule uses the surimi PRR currently listed for yellowfin sole for the consolidated flatfish category. If the consolidated flatfish category was not assigned a PRR for surimi, compliance with MRAs could not be determined for this product form.

The fourth amendment revises § 679.20(b)(1)(ii) to explain how NMFS will determine whether to allocate a portion of a new TAC category to the CDQ Program in the annual harvest specifications. NMFS implemented the current regulations § 679.20(b)(1)(ii) in the final rule for Amendment 80 to the FMP (72 FR 52668, September 14, 2007). These regulations state that if the groundfish harvest specifications change a TAC category allocated to a CDQ reserve by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in § 679.20 (b)(1)(ii)(A) through (D) will apply to the new TAC category. However, section 305(i)(1)(B)(ii)(II) of the Magnuson-Stevens Act addresses allocations to the CDQ Program and provides more specific guidance, namely, “the allocation under the (CDQ) program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.” In the final 2007 and 2008 harvest specifications for groundfish of the BSAI (72 FR 9451, March 2, 2007), NMFS explained our determination that the term “directed fishery” for purposes of section 305(i)(1) of the MSA means a fishery for which sufficient TAC exists to open a directed fishery for that species or species group and that this fishery is economically valuable enough for the CDQ groups to target.

The creation of a new TAC category for Kamchatka flounder required NMFS, in the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011), to determine if Kamchatka flounder was a “directed fishery” for purposes of the CDQ Program. If NMFS determined it was a directed fishery, 10.7 percent of the Kamchatka flounder TAC would be allocated to the CDQ Program. As described in more detail in the final 2011 and 2012 harvest specifications, NMFS determined that Kamchatka flounder was not a “directed fishery” for purposes of the CDQ Program. This rule amends § 679.20(b)(1)(ii) to explain how this determination will be made in future harvest specifications should new TAC categories be created.

Specifically, this rule revises regulations at § 679.20(b)(1)(ii)(D) and removes regulations at § 679.20(b)(1)(ii)(E) that govern CDQ allocations for TAC categories that are established when one species or species group is split from an existing species or species group to form a new TAC category. The species specifically allocated to the CDQ Program in 50 CFR part 679 are pollock, sablefish, the “Amendment 80” species (Aleutian Islands Pacific ocean perch, Pacific cod, Atka mackerel, yellowfin sole, rock sole, and flathead sole), Bering Sea Greenland turbot, and arrowtooth flounder. Paragraph (D)(2) is added to § 679.20(b)(1)(ii) to state that, for all other groundfish species not specifically listed in § 679.20(b)(1)(ii)(A) through (D)(1), an amount equal to 10.7 percent of the BSAI TAC would be apportioned to a CDQ reserve if NMFS, after consultation with the Council, determines in the annual harvest specifications that a directed fishery in the BSAI exists for this species under section 305(i)(1)(B)(i) of the Magnuson-Stevens Act. Thus, in determining that a directed fishery exists in the BSAI and whether the fishery is economically valuable enough for CDQ groups to target, the Council and NMFS would consider whether sufficient TAC exists to open a directed fishery for that species

in the BSAI and determine through public comment submitted by CDQ groups whether CDQ groups are likely to conduct directed fishing for that species. Response to Comments

NMFS received one letter of comment on the proposed rule from the Alaska Seafood Cooperative. A summary of that comment and NMFS's response follows.

Comment 1: The commenter supports the proposed rule, as a way to decrease bycatch in the arrowtooth and Kamchatka flounder fisheries, increase value within those fisheries, and increase vessels' ability to achieve optimum yield. The commenter also recommends one revision to the proposed rule.

NMFS proposed that to reduce confusion regarding MRA compliance for thenon-pelagic trawl vessels (Amendment 80 sector), should either arrowtooth flounder or Kamchatka flounder close to directed fishing, then neither arrowtooth flounder nor Kamchatka flounder could be used as a basis species for the retention of groundfish in the Bering Sea and Aleutian Islands. NOAA Fisheries proposed this provision because Arrowtooth and Kamchatka flounder are morphologically similar and can only be distinguished by gill rakers. Once headed and gutted at sea, the two species are indistinguishable, creating reporting and enforcement challenges.

The commenter stated that since 2011, when the Kamchatka flounder fishery has been open to directed fishing, participants in the Amendment 80 sector have cooperated with the NOAA Office for Law Enforcement to comply with MRA accounting requirements despite arrowtooth flounder and Kamchatka flounder species identification issues, allowing for groundfish to be retained up to the MRA when Kamchatka flounder is open to directed fishing. Under current regulations, BSAI vessels retain arrowtooth flounder and other groundfish species up to the MRA when "other species" (including Kamchatka flounder) is open to directed fishing based on official NMFS observer sampling of arrowtooth flounder and Kamchatka flounder

catch. Arrowtooth flounder and Kamchatka flounder are recorded in the E-landings production report according to the ratio of each species within the observer's sample for each haul. NOAA Office for Law Enforcement would be able to verify compliance with MRAs by reviewing the amount of each species reported in the E-landings production report, and may assess if the retained catch of either arrowtooth flounder or Kamchatka flounder exceeded the MRA in Table 11. The commenter stated that since arrowtooth flounder and Kamchatka flounder have developed into viable fisheries, having the ability to retain non-target species against them will allow the Amendment 80 sector to further improve the groundfish retention obligations.

The commenter suggests that nothing in the proposed regulation would require a different MRA accounting methodology.

To maintain consistency throughout Table 11 and avoid confusion to the public, the commenter recommends removing proposed footnote 9 in Table 11 and adding a separate row and column designating arrowtooth flounder and Kamchatka flounder in Table 11. This change would provide for separate MRA accounting for these two flounder species. The commenter also requests that if NMFS is unable to remove footnote 9 to Table 11, an editing improvement for Table 11 would be to list Kamchatka flounder in the same row and column as arrowtooth flounder.

Response: NMFS agrees with this comment, and revises the final rule to remove footnote 9 to Table 11, and add a separate row and column designating arrowtooth flounder and Kamchatka flounder in Table 11. NMFS believes this revision is consistent with the intent of the proposed rule to reduce regulatory discards. This change will allow separate MRAs for groundfish caught incidentally to arrowtooth flounder and Kamchatka flounder. The NOAA Office for Law Enforcement verifies that the Amendment 80 sector's current application of

observer catch composition data for MRA accounting is an effective method for distinguishing between arrowtooth flounder and Kamchatka flounder, and for ensuring that MRAs for arrowtooth flounder and Kamchatka flounder are not exceeded. NOAA Office for Law Enforcement verifies that the observer composition ratio of Kamchatka flounder to arrowtooth flounder is used to determine the amount of Kamchatka flounder and arrowtooth flounder that may be retained and that this method ensures that the aggregate retained Kamchatka flounder and arrowtooth flounder does not exceed the aggregate of 100 percent of the basis species and up to the MRA for the incidentally-caught species. Other groundfish fishery participants are not currently expected to retain these two species, and MRA compliance for these two species of flatfish has not been an issue for other gear and operation types in the BSAI.

During 2011 the Amendment 80 sector successfully utilized this method for individual species-level MRA accounting for arrowtooth flounder when arrowtooth flounder was closed to directed fishing and Kamchatka flounder was open to directed fishing. A similar procedure is applied in other Bering Sea target fisheries, and NMFS believes that the non-pelagic trawl vessels that retain arrowtooth flounder or Kamchatka flounder will have a strong incentive to constrain catch of both species.

Revisions to the Proposed Rule in the Final Rule

In this final rule, NMFS has removed footnote 9 in Table 11 to Part 679, and listed arrowtooth flounder and Kamchatka flounder as separate lines in each row and column of Table 11. This allows fishery participants to use each species individually as a basis species should one of them close to directed fishing.

This revision does not increase the total amount of any groundfish species that may be harvested in the BSAI groundfish fisheries. Those catch limits are established through the

annual specifications process and remain the limit on total catch. This regulatory amendment allows greater retention of species caught incidentally in the BSAI arrowtooth flounder and Kamchatka flounder fishery and is intended to reduce regulatory discards and increase utilization of groundfish species already caught. All catch of groundfish or prohibited species in the arrowtooth flounder fishery that is reported or estimated to be caught using observer data will be subtracted from the TAC for those species, and fisheries will be closed by NMFS once those limits are reached.

MRA compliance monitoring will continue to be based on procedures at § 679.20(e), which estimate MRAs based on production weights, converted by standard product recovery rates to round weight equivalent weights as defined at § 679.2, and MRAs in Table 11 to 50 CFR Part 679. The final rule does not revise MRA percentages from the proposed rule, or otherwise revise arrowtooth flounder or Kamchatka flounder management in a manner that requires changes to the recordkeeping and reporting and MRA enforcement.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall also explain the actions a small entity is required to take to

comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on September 14, 2012 (77 FR 56789), with comments invited through October 15, 2012. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. NMFS received no comments to the IRFA. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in the Regulatory Flexibility Act (RFA), sections 604(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of

such comments;

3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis. In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically or on the economic impacts of the rule generally; therefore, no changes were made to

the rule as a result of comments on the IRFA.

Number and Description of Small Entities Regulated by the Final Rule

NMFS estimated the number of small versus large entities by matching the gross earnings from all fisheries of record for 2009 with the vessels, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI groundfish fisheries for that year. Based on those earnings data, the FRFA determined that there are 354 catcher vessels directly regulated by this action that had gross earnings less than \$4.0 million, thus categorizing them as small entities based on the threshold that the Small Business Administration uses to define small fishing entities. For catcher/processors, 18 vessels had gross earnings less than \$4 million, categorizing them as small entities. The preferred alternative also affects the six CDQ groups because it revises regulations governing how allocations are made to the CDQ Program of TAC categories established by splitting existing quota categories, as has occurred with arrowtooth flounder and Kamchatka flounder. Due to their status as non-profit corporations, the CDQ groups are also considered to be small entities under the Regulatory Flexibility Act.

Recordkeeping and Reporting

Recordkeeping and reporting requirements will not change as a result of the final rule. The action under consideration requires no reporting, recordkeeping, or other compliance requirements that differ from the status quo.

Description of Significant Alternatives to the Final Rule

The Council evaluated three alternatives and three suboptions to increase the MRAs of groundfish in the arrowtooth flounder fishery in the BSAI. Alternative 1, the status quo or no action alternative, would leave the MRAs for groundfish in the BSAI arrowtooth flounder fishery unchanged from current levels, and would continue to require fishermen to discard otherwise

marketable groundfish.

Alternative 2 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using Pacific cod as a basis species, with two suboptions to modify the Greenland turbot MRA at 15 percent or 7 percent, and one suboption to modify the “other species” group MRA to 3 percent.

Alternative 3 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using flathead sole as a basis species. The Council also considered a suboption to Alternative 3 to change the MRA for Greenland turbot using arrowtooth flounder as a basis species to 15 percent.

To provide the opportunity to the arrowtooth flounder trawl fishing industry to reduce discards by allowing increased retention of groundfish, the Council recommended Alternative 2 as the preferred alternative, with suboptions to modify the MRA for Greenland turbot and the “other species” group. In the EA/RIR/IRFA for this action, the preferred alternative listed here has been designated as Alternative 4. Alternative 2, combined with these suboptions, increases MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shortraker and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; and from zero percent to 3 percent for the “other species” group (consisting of skates, sharks, sculpins, and octopus in the aggregate). The Council recommended that the MRAs for Greenland turbot and aggregated “other species” be based on the approximate average incidental

catch observed in the arrowtooth flounder fishery between 2003 and 2009. A Greenland turbot MRA of 7 percent allows for increased retention of Greenland turbot when arrowtooth flounder is used as the basis species, when Greenland turbot is closed to directed fishing. Constraining the MRA for Greenland turbot to 7 percent instead of 15 percent may reduce the amount of incidentally-caught Greenland turbot in the Amendment 80 sector directed fishery for arrowtooth flounder, allowing for a greater amount of Greenland turbot to be available for small entities in the longline fishery. The longline fishery relies on access to the Greenland turbot directed fishery. The recommended MRA for “other species” conserves the stocks that comprise the “other species” group while allowing for some retained catch of these species in the arrowtooth flounder fishery when the species that comprise the “other species” group are closed to directed fishing.

Alternative 3 would increase the MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, squid, and for the “other species” group (skates, sharks, sculpins, and octopus in the aggregate); from zero percent to 35 percent for Alaska plaice, yellowfin sole, other flatfish, flathead sole, and Greenland turbot; from zero percent to 15 percent for sablefish and aggregated rockfish; and from zero percent to 7 percent for shortraker and rougheye rockfish (combined).

Under Alternative 3, the Council recognized a greater potential for development of fisheries that could increase harvests of species and adversely impact the ability of NMFS to effectively manage several groundfish species within the TAC, and therefore did not recommend this alternative. In general, the development of a fishery is dependent upon a number of factors, including, but not limited to, the price of the MRA species, whether a market exists, accessibility

of the species, storage availability, and processing capacity. In addition, the potential for a vessel to harvest a specific species varies across vessels. A vessel operator has more discretion to harvest specific groundfish species if the operator has the ability to limit incidental catch or the ability to discard low-valued fish, while targeting arrowtooth flounder.

Alternatives 2 and 3 would be beneficial to the affected small entities by providing an opportunity to retain additional, economically valuable groundfish species when arrowtooth flounder is a basis species. Under Alternative 2, the benefits to small entities would be slightly lower than under Alternative 3. However, Alternative 2 with suboptions 2.2 and 2.3 (the preferred alternative), that sets the MRA for Greenland turbot at 7 percent and the MRA for the species that comprise the “other species” group at 3 percent, reduces unintended impacts to the Greenland turbot directed fishery more effectively and provides greater protection for the species that comprise the “other species” group than does Alternative 3. Allowing a greater amount of Greenland turbot retained catch under Alternative 3 may result in earlier closure of the Greenland turbot directed fishery, as compared with Alternative 2 with suboption 2.2. No negative impacts on small entities are associated with either Alternative 2 or 3.

Four additional amendments to the regulations are implemented by this action. The purposes of these amendments are to provide MRA management for Kamchatka flounder that is identical to the MRA management applied to arrowtooth flounder; to coordinate fishing seasons; to facilitate recordkeeping, reporting, and catch accounting of Kamchatka flounder as well as other flatfish species and species groups; and to provide the Council and NMFS greater flexibility in the annual harvest specifications process to allocate TAC (for such species as Kamchatka flounder) to the CDQ Program in the future. These regulatory amendments are

required to manage Kamchatka flounder with the same management measures that apply to arrowtooth flounder because of the close association of these two species in the groundfish fisheries.

No negative impacts on small entities are associated with these regulatory amendments. Participants in the Amendment 80 sector are the primary entities that will be affected by this action since only Amendment 80 sector operators have developed markets for arrowtooth flounder and Kamchatka flounder and have expressed interest in retaining these two groundfish species. Small entities are unlikely to be disadvantaged by the opportunity to retain valuable incidental catch that would otherwise be discarded and made unavailable to sell as a marketable product.

Collection-of-Information Requirements

This rule contains no new or revisions to a collection-of information subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: May 15, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.20, remove paragraph (b)(1)(ii)(E) and revise paragraph (b)(1)(ii)(D) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(D) CDQ reserves for other groundfish species. (1) An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(2) For all other groundfish species not specifically listed in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(D)(1) of this section, an amount equal to 10.7 percent of the BSAI TAC will be apportioned to a CDQ reserve if NMFS, after consultation with the Council and in consideration of public comment, determines in the annual harvest specifications process under paragraph (c) of this section that a directed fishery in the BSAI exists for this species under section

305(i)(1)(B)(i) of the Magnuson-Stevens Act. In making this determination, the Council and NMFS shall consider whether sufficient TAC exists to open a directed fishery for that species in the BSAI and that this species or species group is economically viable for the CDQ group to target.

* * * * *

3. In § 679.21, revise paragraph (e)(3)(iv)(C) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(C) Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, Kamchatka flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

* * * * *

4. In § 679.23, revise paragraph (e)(1) to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(1) Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot.

Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot in the BSAI

is authorized from 1200 hours, A.l.t., May 1 through 2400 hours, A.l.t., December 31, subject to the other provisions of this part.

* * * * *

5. Revise Table 3 to part 679 to read as follows:

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

[illegible]

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut (continued)

[illegible]

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut (continued)

Species Code	FMP Species	Product Code							
		32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly Backbone Removed	88, 89 Infested or Decomposed Fish	98, 99 Discards
110	Pacific Cod	0.17	---	---	---	---	0.43	0.00	1.00
	Flatfish other than Pacific Halibut	0.17	---	---	---	---	---	0.00	1.00
143	Thornyhead Rockfish	0.17	---	---	---	---	---	0.00	1.00
160	Sculpins	0.17	---	---	---	---	---	0.00	1.00
193	Atka Mackerel	0.17	---	---	---	---	---	0.00	1.00
270	Pollock	0.17	---	---	---	---	0.43	0.00	1.00
510	Smelts	0.17	---	---	---	---	---	0.00	1.00
511	Eulachon	0.17	---	---	---	---	---	0.00	1.00
516	Capelin	0.17	---	---	---	---	---	0.00	1.00
---	Sharks	0.17	---	---	---	---	---	0.00	1.00
---	Skates	0.17	---	---	---	---	---	0.00	1.00
710	Sablefish	0.17	---	---	---	---	---	0.00	1.00
870	Octopus	0.17	---	---	---	0.85	---	0.00	1.00
875	Squid	0.17	---	---	---	0.75	---	0.00	1.00
---	Rockfish	---	---	---	---	---	---	0.00	1.00
200	PACIFIC HALIBUT Conversion rates to Net Weight	---	---	---	---	---	---	0.00	0.75

¹Standard pollock surimi rate during January through June

²Standard pollock surimi rate during July through December.

Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.

To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate.

To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

6. Revise Table 11 to part 679 to read as follows:

Table 11 to Part 679-BSAI Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES																
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-Tooth ^a	Kamchatka	Yellow fin sole	Other flatfish ²	Rock sole	Flathead sole	Greenland turbot	Sablefish ¹	Short-raker/rougheye	Aggregated rockfish ⁶	Squid	Aggregated forage fish ⁷	Other species ⁴
110	Pacific cod	20	na ⁵	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3
117	Kamchatka	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3
122	Flathead sole	20	20	20	35	35	35	35	35	35	na	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	35	20	20	20	20	na	15	7	15	20	2	20
136	Northern	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
141	Pacific Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20
193	Atka mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish ¹	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20
875	Squid	20	20	20	20	35	35	20	20	20	20	1	1	2	5	na	2	20
Other flatfish ²		20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20
Other rockfish ³		20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
Other species ⁴		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na
Aggregated amount non-groundfish species ⁸		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20

¹ Sablefish: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).² Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder, and Kamchatka flounder.³ Other rockfish includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.⁴ The other species group includes sculpins, sharks, skates, and octopus.⁵ na = not applicable⁶ Aggregated rockfish includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish.⁷ Forage fish are defined at Table 2c to this part.⁸ All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.